REMARKS

Applicants acknowledge receipt of the Examiner's Final Office Action dated January 7, 2009.

Claims 1, 3, 6-9, 11, 14-17, 19, 22-29 and 33 are pending.

Claims 1, 3, 6-9, 11, 14-17, 19, 22-29 and 33 have been rejected.

Rejection of Claims under 35 U.S.C. § 112

Claims 3, 11, 19 and 33 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to Claims 3, 11 and 19, the Final Office Action indicates that the claimed "plurality of remote properties" lacks antecedent basis. As indicated above, Applicants propose to strike the word "remote." Applicants believe that this amendment addresses the rejection offered by the Final Office Action.

With respect to Claim 33, the Final Office Action states:

> Claim 33 recites the limitation "the sale of additional reservations" in line 21, of Claim 33. There is insufficient antecedent basis for this limitation in the Claim.
>
> In Claim 33 (f), the recited term "the sale of additional reservations", renders the claim indefinite. It is unclear to the Examiner how there can be a sale of a reservation since a reservation is merely the holding for a potential future sale. Further, the term "indivisible space" renders the claim indefinite. It is unclear to the Examiner how any room is "indivisible" since any room no matter how small or large can be divided. Due to the confusing nature of the claim language and for the purposes of expediting prosecution, the Examiner is reading claim 33 part (f) as converting a request for a reservation of a room to a confirmation of the requested room wherein the confirmation comprises selecting a room from a set of available rooms and wherein the delay comprises the time between the time of the initial reservation request is provided to the time of when confirmation is

> provided, which would obviously result in allowing for additional customers to also confirm the same available space since the time between the request and the confirmation is not instantaneous.

See Office Action, pp.2-3. Applicants propose to strike "to allow for the sale of additional reservations," to eliminate any alleged ambiguity.

Applicants respectfully traverse the Examiner's rejection with respect to indivisible space. As will be appreciated, the MPEP clearly articulates the level of clarity and precision required of claim language:

> The examiner's focus during examination of claims for compliance with the requirement for definiteness of 35 U.S.C. § 112, second paragraph, is whether the claim meets the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available. When the examiner is satisfied that patentable subject matter is disclosed, and it is apparent to the examiner that the claims are directed to such patentable subject matter, he or she should allow claims which define the patentable subject matter with a reasonable degree of particularity and distinctness. Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire. Examiners are encouraged to suggest claim language to applicants to improve the clarity or precision of the language used, but should not reject claims or insist on their own preferences if other modes of expression selected by applicants satisfy the statutory requirement.
>
> The essential inquiry pertaining to this requirement is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of:
>
> (A) The content of the particular application disclosure;
>
> (B) The teachings of the prior art; and
>
> (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.

MPEP 2173.02 (emphasis in original). Looking to the content of the particular application disclosure, the teachings of the prior art and the claim interpretation that would be given by one

possessing the ordinary level of skill in the pertinent art at the time the invention was made, the meaning of indivisible space is clear. The specification states:

> Space product 110 may also be structured as category space 114 or specific space 115 to optimize space utilization. The specific space 115 may be indivisible space 116 (space that cannot be subdivided) or configured space 117. Configured space 117, which is a combination of indivisible spaces, and category space 114 can be used to optimize use of available space as described below in reference to Figure 4.

Application, ¶[0023]. Thus, the test is not whether, "any room no matter how small or large can be divided." The relevant test for definiteness is whether one skilled in the art would understand what is meant by indivisible space, which Applicants respectfully submit is clear, in light of the present disclosure, to anyone having stepped into a hotel event space with removable walls. Thus, Applicants respectfully submit that the wording of Claim 33 is clear as submitted.

Rejection of Claims under 35 U.S.C. § 103

Claims 1, 3, 6-9, 11, 14-17, 19 and 22-29 and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0069094 by *Bingham et al.*, (*Bingham*) in view of U.S. Patent Application Publication No. 2005/0033613 by Patullo *et al.* (*Patullo*). Claim 32 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bingham* in view of *Patullo* and further in View of "Christmas in Williamsburg" by Edward B. Fiske (*Fiske*). While not conceding that the cited references qualify as prior art, but instead to expedite prosecution, Applicants have chosen to respectfully disagree and traverse the rejections, to the extent that rejections may be applied against the amended claims, as follows. Applicants reserve the right, for example, in a continuing application or request for continuing examination, to

establish that the cited references, or other references cited now or hereafter, do not qualify as prior art as to an invention embodiment previously, currently, or subsequently claimed.

In order for a claim to be rendered invalid under 35 U.S.C. §103, the subject matter of the claim as a whole would have to be obvious to a person of ordinary skill in the art at the time the invention was made. *See* 35 U.S.C. §103(a). This requires: (1) the reference(s) must teach or suggest all of the claim limitations; (2) there must be some teaching, suggestion or motivation to combine references either in the references themselves or in the knowledge of the art; and (3) there must be a reasonable expectation of success. *See* M.P.E.P. 2143; M.P.E.P. 2143.03; *In re Rouffet*, 149 F.3d 1350, 1355-56 (Fed. Cir. 1998).

Applicants respectfully submit that the present Final Office Action does not articulate a *prima facie* case of obviousness over the combination of *Bingham* with *Patullo*, because the sections of *Bingham* and *Patullo* cited in the Final Office Action do not teach or suggest all of the recited limitations of amended Claim 1, or of amended Claims 9 and 17, which are rejected on similar reasoning. Amended Claim 1, for example, recites:

> a digital processing system receiving a request for a function space, the digital processing system comprising availability information for a plurality of function spaces at a plurality of properties and a set of pricing rules, the request comprising a plurality of criteria;
>
> determining an availability of the requested function space based upon some or all of the availability information and one or more of the plurality of criteria;
>
> determining that the requested function space satisfying the one or more of the plurality of criteria is unavailable;
>
> automatically providing a real-time price quote for the requested function space based on the set of pricing rules in spite of having determined that the requested function space satisfying the one or more of the plurality of criteria is unavailable;
>
> receiving an acceptance of the price quote for the requested function space from a user; and

establishing a reservation for the requested function space, wherein, if said function space is unavailable, said reservation comprises an overbooking.

See, e.g., amended Claim 1. The combination of *Bingham* and *Patullo* does not teach or suggest all elements of Applicants' amended Claim 1.

Specifically, amended Claim 1 recites, "automatically providing a real-time price quote for the requested function space based on the set of pricing rules in spite of having determined that the requested function space satisfying the one or more of the plurality of criteria is unavailable." The Final Office Action asserts that "the Examiner is interpreting this limitation as simply providing a price quote without regard to availability." *See* Final Office Action, page 8. Applicants respectfully submit that this reading of the claim is improper, as it neglects several of the limitations specifically recited in the claim. Applicants respectfully note that condensing the recited "automatically providing a real-time price quote for the requested function space based on the set of pricing rules" to "providing a price quote" unfairly edits the claim so as to render meaningless the words actually used in the claim. Applicants respectfully submit that "all words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 165 USPQ 494, 496 (CCPA 1970).

The present Final Office Action alleges that the combination of *Bingham* with *Patullo*, through text in *Patullo*, teaches:

> direct price quote requests (Figures 4 and 5; discloses that the price quote given does not guarantee or promise availability of the desired suite, it simply gives a price quote based on the users search criteria) even if the request is unavailable on certain dates (paragraphs 0023, 0031 and 0033; disclose that this information is given out before the user is aware if there is availability in their requested room).

See Final Office Action, page 8. Applicants respectfully submit that the cited texts do not provide any suggestion of a quote of price in spite of having determined that the requested

function space satisfying the one or more of the plurality of criteria is unavailable. The first cited text states:

> [0023] Referring now to the drawings wherein the showings are for the purposes of illustrating a preferred embodiment of the invention only and not for purposes of limiting same, FIG. 1 shows a general flow diagram illustrating operation of a reservation system (also known as a "booking engine") according to a preferred embodiment of the present invention. First, a rates and reservation inquiry display is presented to a user (step 10). The user indicates whether they are a direct customer or a travel agency (step 12). If the user is a travel agency, a travel agency ID is entered (step 16) and a travel agent price quote request display is presented to the user (step 18). Similarly, if the user is a direct client, then a direct client price quote request display is presented to the user (step 14). It is then determined whether a selected resort allows children (step 20). If so, the user is provided with a display to enter child information (e.g., age) in step 22. This child information may also be important to making flight arrangements in order to reserve a seat suitable for infants/toddlers. If no children are allowed at the selected resort, the reservation system proceeds to steps 30-34 for travel agents, and steps 40-44 for direct clients. At steps 30 and 40, the user is presented with a price quote result display, at steps 32 and 42, the user is presented with a reservation booking request display, and at steps 34 and 44 the user is presented with a reservation booking confirmation display 34.

See Patullo, ¶[0023]. It is noteworthy that the notion of a quote of price in spite of having determined unavailability is entirely absent. The cited text certainly neither teaches nor suggests "automatically providing a real-time price quote for the requested function space based on the set of pricing rules in spite of having determined that the requested function space satisfying the one or more of the plurality of criteria is unavailable."

The second cited text does not remedy this deficiency, stating:

> [0031] Upon entry of the information in the price quote request display, a price quote result display is generated (FIG. 5). This display provides a listing of room accommodations at the selected resort, pricing with resort only, and pricing with airfare (economy and/or first class). Moreover, this display also provides a summary of the basic selection information from the price quote request display, and allows a user to view images (e.g., a video) of the selected resort. Furthermore, this display may also informs the user of minimum night stay requirements and maximum adults per accommodation. It should be appreciated that in accordance with a preferred embodiment, the airfare pricing is determined by accessing a "local" database with prestored pricing information, rather than

> accessing an "outside" computer network, such as Sabre, Worldspan, or Amadeus for pricing information.

See Patullo, ¶[0031]. Again, no quote of price in spite of having determined unavailability is taught or suggested. The cited text certainly neither teaches nor suggests "automatically providing a real-time price quote for the requested function space based on the set of pricing rules in spite of having determined that the requested function space satisfying the one or more of the plurality of criteria is unavailable." The lack of a quote of price in spite of having determined unavailability persists in the third cited text, which states:

> [0033] It should be appreciated that after entry of the information associated with the price quote request display, the user is informed of the dates when a room category (or multiple categories) are unavailable for sale (FIG. 9). This allows a user to go back one step and easily select travel dates either before or after the unavailable period. **This display of unavailable dates prevents** a user from having to select date after date in a trial and error fashion to figure out when a desired room category is available for sale both before and after the original travel period requested. Multiple unsuccessful searches that do not aid the user towards a more informed subsequent search can frustrate the user and lead them to abandon the reservation process. FIG. 9 shows another exemplary price quote request display wherein economy and first class airfare is shown, and where room category unavailability is indicated for one type of room accommodation. Room category unavailability is indicated for all dates overlapping with selected dates from the price quote request display.

See Patullo, ¶[0033] (emphasis added). While the accompanying Figure 5 and Figure 8 do contain an ambiguous disclaimer that prices are "availability not confirmed," the absence from the combination of *Bingham* with *Patullo* of the teaching or suggestion of quote of price in spite of having determined unavailability undermines the present Final Office Action's *prima facie* case of obviousness by eliminating from the combination a recited element.

Further, the underlined portions of the cited text indicate, as does the presence of an unavailability warning **as a substitute for a price** in Figure 9, that *Patullo* teaches away from the recited "automatically providing a real-time price quote for the requested function space based on the set of pricing rules in spite of having determined that the requested function space

satisfying the one or more of the plurality of criteria is unavailable" by withholding a price when availability is in question. The Final Office Action alleges that:

> [I]t would have been obvious to one of ordinary skill in the art to incorporate into the reservation system of Bingham the price quotes taught in Patullo so as to provide enhanced convenience for the user by providing the user with pricing package information after entry of the information into the request display. One would be motivated to include this information so that a user can have an idea of what prices are for different amenities and to comparison shop, finding out if they price information is in line with market rates. Often people use price quotes to get an idea how much a particular reservation request is going to cost and use these quotes in making a determination of which facility to commit to for a reservation. Therefore, it would have been obvious to provide a price quote to a user searching for reservation information since in the reservation industry it is common business practice to provide a price quote to a user such as if one calls a hotel to get rates on single rooms, double rooms, luxury suites, rooms with balconies over the ocean, etc.

See Final Office Action, p.8. This assertion of obviousness, however, does not overcome the plain contrary teaching of the reference.

Further, even if one skilled in the art were motivated to proceed in a manner contrary to human nature, one skilled in the art would not be motivated by the reference to contradict the plain teaching of the reference. Applicants claim "automatically providing a real-time price quote for the requested function space based on the set of pricing rules in spite of having determined that the requested function space satisfying the one or more of the plurality of criteria is unavailable." The reference teaches "room category unavailability is indicated for one type of room accommodation. Room category unavailability is indicated for all dates overlapping with selected dates from the price quote request display." The diagram (Figure 9) shows the unavailability indicated in place of price, thereby teaching away from Applicants' recited claim limitation and undercutting the Office Action's assertion of obviousness.

The Examiner has courteously responded to this argument at Page 21 of the present Final Office Action, stating:

> As per Applicant's argument that the cited sections of Bingham and Patullo do not teach or suggest all elements of Applicants' recited Claim 1, specifically that the Examiner has made an error in interpreting the recited limitations "automatically providing a real-time price quote for the requested function space based on the set of pricing rules in spite of having determined that the requested function space satisfying the one or more of the plurality of criteria is unavailable". The Examiner respectfully disagrees as currently claimed, Claim 1 recites that "in spite of having determined that the requested function space satisfying the one or more of the plurality of criteria is unavailable", from this it is taken that the space could be available or unavailable , Patullo teaches in at least figure 5 that the price quote given is not based on availability therefore covering both available or unavailable spaces. All the limitations of this claim are covered since Bingham is providing the criteria selection and Patullo is showing that a price quote can be given for both available and unavailable spaces. Further the applicants argument "there is an absence from the combination of Bingham with Patullo of the teaching or suggestion of quote of price without regard to availability undermines the present Office Action's prima facie case of obviousness by eliminating from the combination a recited element", the Examiner respectfully disagrees as stated in the Office Action Figure 5 of Patullo teaches the concept of Availability Not Confirmed, from this it is shown that the limitation of a price quote for both available and unavailable spaces is met by the Patullo reference in that the quote is given for both spaces. Further, Bingham discloses that the criteria are submitted in real time (Page 1, paragraph 0008).

Final Office Action, page 21. Applicants respectfully disagree. The Final Office Action indicates that "Patullo teaches in at least figure 5 that the price quote given is not based on availability therefore covering both available or unavailable spaces." Applicants have claimed the "providing a real-time price quote... in spite of having determined that the requested function space ... is unavailable." Thus, Applicants claim requires both the formation of a determination, which is now explicitly recited in amended Claim 1, and an affirmative decision to display in spite of an adverse determination. This particular relationship, which requires a previous determination, is not taught or suggested by the combination of references. The combination of references skips the determination entirely, as supported by the Final Office Action's assertion that the "Bingham discloses that the criteria are submitted in real time" (*i.e.*, without time for a determination to be performed). To clarify this distinction, Applicants have amended Claim 1 to recite "determining that the requested function space satisfying the one or more of the plurality

of criteria is unavailable." Applicants respectfully submit that the proposed combination of the determining limitation and "providing a real-time price quote... in spite of having determined that the requested function space ... is unavailable" establishes an explicit temporal relationship that is neither taught nor suggested by the combination of Bingham with Patullo.

The Final Office Action further states:

> [T]he fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. *See Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). Further figure 8 nor figure 9 of Patullo were used to teach the limitation of providing a price quote for selected spaces regardless if it is available or not, Figure 5 was for this reason and Figure 5 displays no warning of unavailable rooms. Since the Examiner has used figure 5 to teach this limitation, the Examiner respectfully disagrees that it teach away from the applicants invention and asserts that figure 5 shows the limitation as currently claimed.

See Office Action, p.22. As an initial matter, Applicants respectfully submit that Applicants have not, as the Final Office Action alleges, "recognized another advantage which would flow naturally from following the suggestion of the prior art." Applicants have, on the contrary, claimed an invention which proceeds away from the teachings of *Bingham* and *Patullo*. Applicants submit that the fact that inventor "proceeded contrary to the accepted wisdom of the prior art" [teaching away] is "strong evidence of nonobviousness." *See W.L. Gore and Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303, 312 (Fed. Cir. 1983).

Applicants respectfully submit that it "is impermissible within the framework of Section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." *See In re Hedges*, 783 F.2d 1038, 228 USPQ 685, 687 (Fed. Cir. 1986). Applicants respectfully submit that no evidence exists within the combination of *Patullo* and *Bingham*, and more particularly within Figure 5, to suggest providing a price quote in spite of having determined unavailability. Even if Figure 5 were to

ambiguously suggest providing a price quote without having determined availability, a notion which Applicants do not concede and which is not supported by the mere presence of a disclaimer in the figure, seizing on the *ambiguity* of Figure 5 in spite of the *clearly contrary* teachings of Figure 9 distorts the reference and picks and chooses from the reference only so much as will support the Examiner's position, to the exclusion of other parts necessary to the full appreciation of what the references fairly suggests.

Simply stated, the combination of *Patullo* with *Bingham* does not teach "automatically providing a real-time price quote for the requested function space based on the set of pricing rules in spite of having determined that the requested function space satisfying the one or more of the plurality of criteria is unavailable," either through Figure 5 or elsewhere. The combination of *Patullo* with *Bingham* does teach away from "automatically providing a real-time price quote for the requested function space based on the set of pricing rules in spite of having determined that the requested function space satisfying the one or more of the plurality of criteria is unavailable," by displaying unavailability as a substitute for price. Thus, Applicants respectfully submit that the present Office Action does not articulate a *prima facie* case of obviousness over the combination of *Bingham* with *Patullo*, because the sections of *Bingham* and *Patullo* cited in the Final Office Action do not teach or suggest all of the recited limitations of amended Claim 1, or of amended Claims 9 and 17, which are rejected on similar reasoning.

Because all claim limitations must be taught or suggest by a combination of references to render a claim obvious under 35 U.S.C. §103, Applicants submit that the failure of the Final Office Action to point to any teaching or suggestion of a limitation of independent Claim 1 demonstrates that Claim 1 and all claims depending therefrom are allowable over the combination of *Bingham* with *Patullo*. Applicants respectfully request allowance of Claim 1 and all claims depending therefrom. Applicants similarly respectfully request a withdrawal of all

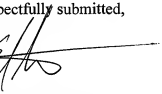
rejections of an and an immediate notice of allowance of Claims 9 and 17 and all claims depending therefrom. Further, Applicants respectfully request a notice of allowance with respect to new independent Claim 33.

CONCLUSION

Applicants submit that all claims are now in condition for allowance, and an early notice to that effect is earnestly solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is requested to telephone the undersigned.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to deposit account 502306.

Respectfully submitted,



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